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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,810	07/22/2003	Jack Dunnous	H1076/20008	6636

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EXAMINER
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TUROC, DAVID P

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/624,810

Applicant(s)

DUNNOUS ET AL.

Examiner

David Turocy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The applicant amendments, filed 6/20/2005, have been fully considered and reviewed by the examiner. In light of the amendments to claims 8, 11, 24, and 25, the claim objection and 35 USC 112 rejection to the claims has been withdrawn. Claims 1-25 remain pending, with claim 25 withdrawn pursuant a restriction requirement.

2. The declaration filed on 6/20/2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Bailey et al. reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Bailey et al. reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). The evidence submitted is not commensurate in scope with the rejected claims. The Bailey et al reference is relied upon for a teaching of a known method for producing multi-colored concrete and the declaration while addressing the pigment/binding agent dispersion, does not effectively precede the Bailey reference on each and every limitation the Bailey reference teaches. Therefore the evidence is insufficient to overcome the Bailey et al. reference.

In addition the examiner notes the execution of the declaration is defective because the first inventor has not dated the signature and the Invoice # 407889 has not been presented with the Declaration.

***Response to Arguments***

3. Applicant's arguments filed 6/20/2005 have been fully considered but they are not persuasive.

The applicant has argued against the Bailey et al reference stating that it is not prior art. The examiner disagrees for the reasons set forth above and therefore Bailey et al reference remains prior art.

The applicant has argued against the combination of Bailey et al and Jungk references stating one of ordinary skill in the art would not be motivated to combine the references. The examiner respectfully disagrees. Bailey et al. teaches of a method apply a liquid pigment to wet concrete for the purposes of coloring the concrete and Jungk teaches of a binding agent wherein a pigment/binder mixture is easily dispersible in concrete for the purposes of coloring (Column 2, lines 56-57). Jungk reasonably suggests to one of ordinary skill in the art the pigment dispersion is promoted using a binder. Therefore one of ordinary skill in the art at the time of the invention would be motivated to modify Bailey to use a binding agent as taught by Jungk to reap the benefit of having a pigment which is easily dispersible in the concrete.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 23 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not provide sufficient support for the percentage ranges in claims 23 and 24 are percent by weight of the spray color dispersion. The specification does not reasonably convey the inventors, at the time of filing, had possession of pigment comprising about 2% to about 60% *by weight* of the color dispersion or polymer binding agent comprising 1% to 60% *by weight* of the color dispersion.

6. Claims 15 and 16 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for curing the concrete after addition of color dispersion, does not reasonably provide enablement for curing the concrete *on more than one occasions*. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. Claim 15 requires another materially

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different curing step for curing the concrete and the specification does not reasonably enable two curing steps.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-6, 10-12, 14-18, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patent Publication 2003/0197310 by Bailey et al ("Bailey") in view of US Patent 4946505 by Jungk.

These claims remain unpatentable over Bailey in view of Jungk for the same reasons as discussed in the office action dated 1/19/2005 and for the reasons set forth above. However Bailey in view of Jungk fails to explicitly teach binding the polymer binding agent with the wet concrete. However, the prior art and the present claims, reflected by claims 11 and 15, teach all the same process steps and thus the results obtained by applicants process must necessarily be the same as those obtained by the prior art. Therefore by applying a pigment/polymer binding agent dispersion to wet concrete, it must necessarily result in the polymer binding agent bonding to the wet concrete. Either 1) the applicant and the prior art have different definitions for an spraying the dispersion on the wet concrete, or 2) the applicant is using other process steps or parameters that are not shown in the claims.

4. Claims 7-9 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patent Publication 2003/0197310 by Bailey et al ("Bailey") in view of US Patent 4946505 by Jungk and further in view of Kirk-Othmer.

These claims remain unpatentable over Bailey in view of Jungk and further in view of Kirk-Othmer for the same reasons as discussed in the office action dated 1/19/2005 and for the reasons set forth above.

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5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patent Publication 2003/0197310 by Bailey et al ("Bailey") in view of US Patent 4946505 by Jungk and further in view of US Patent 5846315 by Johansen, Jr et al ("Johansen").

These claims remain unpatentable over Bailey in view of Jungk and further in view of Johansen for the same reasons as discussed in the office action dated 1/19/2005 and for the reasons set forth above.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Turocy whose telephone number is (571) 272-




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2940. The examiner can normally be reached on Monday-Friday 8:30-6:00, No 2nd Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Turocy  
AU 1762



**TIMOTHY MEEKS**  
**SUPERVISORY PATENT EXAMINER**